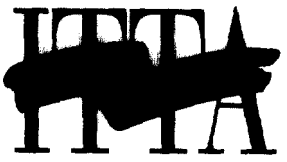

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INDEPENDENT
TELEPHONE & TELECOMMUNICATIONS
ALLIANCE

August 17, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77

Dear Ms. Salas:

This letter is to advise you that the Independent Telephone and Telecommunications Alliance (ITTA) is submitting the attached Comments in the above-referenced proceeding. One original and four copies of the Comments are attached for filing with your office in accordance with Sections 1.415 and 1.419(b) of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419(b). Six additional copies are also attached for filing with the Chairman and Commissioners and the International Transcription Services (ITS).

Please feel free to contact me if you have any questions regarding this matter.

Respectfully submitted,

David W. Zesiger
Executive Director

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform for Incumbent	)	CC Docket No. 98-77
Local Exchange Carriers Subject to	)	
Rate-of-Rate Regulation	)	

Comments of
The Independent Telephone & Telecommunications Alliance

The Independent Telephone & Telecommunications Alliance (ITTA), on behalf of its midsize company members, supports the Commission's attempts to address regulatory reform for rate-of-return regulated companies. But ITTA also asks the Commission to candidly measure its proposed access charge reforms against congressional desires for a "deregulatory" national policy framework. The Notice contains a nucleus of important precepts and correctly raises issues which must be addressed as part of any deregulatory initiative. But the delayed application of increasingly historical price cap company structures to ROR companies merely perpetuates one-size-fits-all regulation under a different guise. More importantly, such a course fails to address deregulation on the broader, more creative level required to meet the expectations of the 1996 Act. ITTA urges the Commission to think more broadly and pledges to work with the Commission and its staff to develop more appropriate vehicles for the transition of midsize companies to deregulation and competition.

1. The FCC Notice identifies important elements of a deregulatory framework.

The Commission accurately portrays the views of ITTA's members when it notes that midsize companies are "very concerned" with the competitive implications of the current regulatory regime, including the existing access charge structure. The pervasive nature of that concern finds reflection in the multiple, recent ITTA submissions to the Commission. In the past five months, ITTA's filings have

- sought minimal but important levels of forbearance under Section 10;
- supported the Commission's non-prescriptive approach to OSS standards;
- demonstrated that midsize companies have not abused and have no incentive to abuse CLEC affiliations;
- supported midsize company applications for Part 69 waiver (to allow term and volume discount pricing) and for company-specific productivity ("X") factor computations; and
- encouraged increased Commission efforts at identifying and repealing unnecessary regulations under Section 11.

The continuing thread of midsize company concern is that there is a clear need for reduced regulation in order to free midsize companies to demonstrate their competitive capabilities and advanced telecommunications potential.

Midsize companies are increasingly concerned that the manifest evolution of competition and competitive market implementation are not being matched by a similarly paced federal process for deregulation. The current Notice of Proposed Rulemaking, although intended to "unleash the dynamic forces of competition and deregulation," to some degree confirms midsize concerns for the slow pace of deregulation. Rather than

suggesting a comprehensive and dynamic program for rate-of-return (ROR) regulated companies, the Notice proposes imposition of a regime applied more than a year ago to price cap companies. Over two and one-half years have elapsed since the adoption of the 1996 Act, yet the Notice further postpones consideration of critical deregulatory issues such as pricing flexibility and alternative regulation.

What is needed is a more proactive, comprehensive view of deregulation. The current Notice does at least contain several elements which could form the basis of a such a comprehensive approach to midsize company deregulation.

a. One size does not fit all

The Commission correctly notes that rate-of-return LECs are not a "homogenous group." This is especially true of ITTA's members. In past filings, ITTA has demonstrated the wide variations in size, systems, and serving areas existing between and among its members. These and scores of other factors produce variations in market conditions which do not lend themselves to easy categorization and generalized regulatory requirements. While, as the Commission notes, midsize carriers may incur some costs in the same manner as larger carriers, they do not do so as to all costs, nor to the same degree, nor with the same timing, etc. Similar economic principles may apply, but the manner of that application is varied.

These differences partially account for the inadequacy of the Notice's proposed actions. For example, the Commission proposes to extend to ROR carriers the optional Ameritech SS7 rate structure and the "me too" streamlined petition process under 47 C.F.R. 69.4(g). Certainly, these are welcome changes. But the very dissimilarity among ROR companies which the FCC identifies elsewhere in the Notice suggests the limited

utility of confining access charge reform to such price cap paradigms. The large BOCs may very well benefit from "me too" processes because they are often much alike. ROR companies, and particularly 2% companies, are not so alike, either to the BOCs or to each other. Thus, the "me too" approach is a necessarily limited deregulatory policy when the "me's" involved aren't particularly similar.

b. Waivers are unsatisfactory vehicles for effecting deregulation.

In the long run, waiver processes are a poor substitute for an affirmative deregulatory structure. Nonetheless, the Notice advances the waiver process as a major means for recognizing the unique characteristics of midsize companies.

The problems with waiver processes as the workhorse of deregulation are twofold. First, they lack substantive standards that offer affirmative, precedential guidance for management decision-making. To obtain waivers, applicants must demonstrate "special circumstances" justifying a departure from the established rule, and must demonstrate that such a departure "will serve the public interest." "Special" is scarcely a common law term of art. Some level of administrative discretion in interpreting such a standard is unavoidable. This interpretive flexibility may well make the Commission feel more comfortable with such a process. But that comfort may derive from the avoidance of having to give up control -- what Commissioner Powell has described as the "fear of ceding control to the marketplace." That ceding of control is the very object of deregulation.

Second, waiver processes can rapidly become an administrative problem for Commission and carrier, alike. The timing of the Commission's handling of ATU's Part 69 waiver was initially expeditious, but appears to have slowed down. Competitive

markets require rapid action. The waiver process is, by its nature, temporally unbounded. Moreover, how many such applications can the Commission concurrently handle rapidly? The more waiver applications made, the longer processing can take, even in meritorious cases like ATU's. In military terms, the Commission or its staff becomes "task saturated." The potential limits of the "me too" approach, described above, suggest that this boost to the waiver processes may prove inadequate, as well. And as the Commission falls behind in waiver processing, carriers fall behind in the marketplace, and consumers suffer.

c. Section 251(f) is relevant to deregulation.

The commission gingerly touches upon the potential impact of the section 251(f) exemption, suspension, and modification provisions on deregulatory policy. ITTA agrees that Section 251 affords midsize companies the potential for a set of interconnection rules different from those applicable to large LECs and different as between individual ROR LECs and among specific state jurisdictions. These factors implicate two sets of issues germane to deregulation.

The first and more obvious, as ITTA has repeatedly noted and as the Commission has come to recognize, is that Congress recognized factual differences between 2% companies and large LECs. In fashioning the rules for interconnection applicable to 2% carriers, Congress authorized the state commissions to vary the scope of incumbent competitive obligations wherever the statutory justifications are met. The Commission should embrace such variability in restructuring access charges here.

But this variability, controlled by the states, leads to a second, less obvious problem: how to coordinate state and federal deregulatory policies. As the Commission

pointedly notes in footnote 66, the states have exclusive authority to determine whether to continue, permit, or revoke 251(f) exemptions, suspensions, and modifications. Conversely, as the Notice demonstrates, the Commission alone has authority to control federal access charge elements and pricing, which authority, in effect, can include some degree of suspension or modification power on the federal side through the waiver, Section 10, and Section 11 processes. The vehicle for coordinating the exercise of such powers in each separate jurisdiction, however, such as to remove the regulatory fears noted by Commissioner Powell, above, is not provided for in the statute. Thus, as the Notice seems to imply, the mere potential represented by 251(f)(2) impairs the opportunities for flexibility which midsize companies seek.

Congress wanted a deregulatory national policy framework. It also determined that midsize companies needed flexibility in transitioning to competition and deregulation. That midsize companies will increasingly seek federal deregulatory flexibility is a certainty. Contrasted to these basic factors, the Notice proposals are helpful but ultimately insufficient to the deregulatory goals embedded in the 1996 Act.

2. The Commission needs to develop and implement new vehicles for achieving midsize company deregulation.

The Notice makes clear that the Commission recognizes that one size does not fit all, but also makes clear that the Commission has only a one-size program to offer for competitive and deregulatory transition. What is lacking is some broader, more comprehensive way of integrating the disparate jurisdictional authority, rights, duties and needs into a cohesive deregulatory program for midsize companies.

The Commission has no current plan for addressing 2% company transition to competition. At the present rate, midsize companies will continue under existing

regulation until some point after the BOCs have secured 271 long distance entry. Although it provided interconnection flexibility and deregulatory initiatives, Congress did not construct a specific path for transitioning mid-size companies to competition.

Therefore, midsize companies must work with the Commission and its staff to bring forward a deregulation plan for acceptance and implementation by the Commission. The plan must provide the basis for getting the FCC to discern and act on the differences between BOC requirements and midsize company requirements for achieving such markets. Unless such a separate program is implemented, midsize companies face a period of debilitating delay, followed by implementation of a plan developed for the BOCs. As Assistant Attorney General Klein recently put it:

> *One important question that many may ask, and that I have been asked before, is what to do about those companies not subject to Section 271 or those that are subject to 271 and just don't care about getting into long distance. Put simply, the Act's market opening requirements are not options; they are mandatory. And once we have established a strong track record about what it means to fully and irreversibly open a local market, we will be in an even better position to insist that all companies comply with these standards. State regulators are increasingly considering their options for forcing companies to comply with the Act and we at the Justice Department are well aware that Section 2 of the Sherman Act remains in effect to address exclusionary practices.*

The interests of the midsize companies and the consumers in their markets will be disserved by such delay and by the prospective, subsequent application of a BOC-oriented plan. Public and private interests are best served by developing a program now, which will promote the opening of mid-size markets but will permit concurrently midsize companies a fair opportunity to succeed in those markets.

Conclusion

The regulatory impulse to proceed cautiously, if at all, is strong but counterproductive. Indeed, as ITTA has objected in the past, this impulse has led to recent, regressive treatment of mid-size companies in areas where no abuse has been demonstrated and where deregulation rather then reregulation is appropriate. As BOC efforts to reposition under section 271 in the market intensify and consume Commission time, attention and resources, midsize companies risk being left behind as the last of the regulatory holdovers. Lacking a statutory scheme for repositioning, such companies desire to work actively with the Commission to propose innovative ways for structuring a proactive deregulatory program, now, fitted to the varied conditions of midsize companies.

Respectfully submitted,

THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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